

1 this. All right. Again, when can these documents be  
2 produced? I understood a week. Is that still the case?

3 MR. EISEN: Well, I'd shoot for a week, Your  
4 Honor. I think we can do that.

5 MS. POLIVY: Your Honor, insofar as we have to go  
6 through all of our billing stuff, I don't even know if it is  
7 still in the office, we will attempt to comply.

8 JUDGE CHACHKIN: Let me indicate this --

9 MS. POLIVY: We will indicate to Mr. Cole if it is  
10 going to take more time and how much time.

11 JUDGE CHACHKIN: But assuming that one item or two  
12 takes more time, I would still expect that within a week a  
13 substantial amount of documents will be furnished.

14 MR. EISEN: No question about that.

15 JUDGE CHACHKIN: And if you have to indicate there  
16 that you can't complete it for a few more days, you can just  
17 so indicate. All right. That takes care of that.

18 There was a contingent motion for leave to submit  
19 second request for production of documents. I think that  
20 was directed at LTD. Is it?

21 MR. COLE: That's correct, Your Honor. Well,  
22 there was an original request presented to LTD. After the  
23 request was presented, your order came out declaring LTD.  
24 not to be a party.

25 JUDGE CHACHKIN: Right.

1           MR. COLE: LTD. then served a letter on us saying  
2 they weren't going to so file. I didn't file this  
3 contingent request because I thought I should be able to get  
4 the documents at least through company if not through LTD.  
5 LTD. then came back into the proceeding and that's where  
6 things stand right now.

7           MS. POLIVY: Your Honor, let me clarify something.

8           JUDGE CHACHKIN: All right.

9           MS. POLIVY: We sent a letter to both counsel for  
10 the Commission and Mr. Cole in which we noted that we were  
11 no longer a party at that time to the proceeding. But that  
12 we were willing to sit down and discuss with them  
13 voluntarily turning over relevant documents. We have not  
14 heard from either one of those gentlemen.

15           We are still willing to sit down as we would  
16 normally do in any federal court proceeding where you work  
17 these things out instead of winding up using two hours of  
18 your time to go through these things one at a time.

19           Let me state our position simply and if there is  
20 any question, we can perhaps resolve it here. Insofar as  
21 Rainbow Broadcasting, LTD., has any documents which you have  
22 ruled are relevant concerning Rainbow Broadcasting Company,  
23 we will comply as you have ordered Rainbow Broadcasting  
24 Company. Insofar as those documents deal with the operation  
25 of Rainbow Broadcasting, LTD., which are not part of those

1 issues, we do not think that we should be made to comply  
2 unless there is a showing as to how they are relevant to the  
3 issues of Commission --

4 JUDGE CHACHKIN: I agree with that position and I  
5 think that there is no need then for me to rule. I think  
6 you wanted any documents in their possession which related  
7 to Rainbow Broadcasting Company. Is that correct, Mr. Cole?

8 MR. COLE: Yes, Your Honor. But, again, I don't  
9 want to sound like a broken record, but I still think that  
10 the nature of the positions which Rainbow has articulated to  
11 the Commission since 1991 make it clear that Rainbow  
12 Broadcasting, LTD. qualifications were an issue in this  
13 matter.

14 JUDGE CHACHKIN: And as I have indicated to you, I  
15 will permit you to prepare a motion for production of  
16 documents, an additional motion for production of documents  
17 predicated on any representations made in the record and  
18 asking for documents based on those representations.

19 MR. COLE: Thank you, Your Honor.

20 JUDGE CHACHKIN: If there are any objections, then  
21 I'll rule on it.

22 MR. COLE: We'll take care of that.

23 JUDGE CHACHKIN: All right. But insofar as the  
24 condition motion -- which I don't even get because it's  
25 between the parties, does not involve me. I'm just going to

1 dismiss them or just ignore them.

2 MS. POLIVY: Your Honor, we will await Mr. Cole's  
3 next --

4 JUDGE CHACHKIN: Right. One other thing I wanted  
5 to take up and that was as far as the request for admissions  
6 are concerned and Rainbow objected to certain requests, I  
7 believe, 14, 22, and 44 and Rainbow's objection was the  
8 document speaks for itself. Well, that's not sufficient.  
9 That is not an objection. Either you admit it or deny it.  
10 That's what it says. And that's true of 14, 22 and 44.

11 MS. POLIVY: Your Honor, as I understand those, in  
12 those situations, they have taken a sentence or a phrase out  
13 of a document.

14 JUDGE CHACHKIN: Yes.

15 MS. POLIVY: They are entitled to the entire - we  
16 can't admit in the sense that they are asking --

17 JUDGE CHACHKIN: You can admit that's what the  
18 statement says.

19 MS. POLIVY: But the document says -- I mean we  
20 don't dispute that.

21 JUDGE CHACHKIN: Well, it gets more complicated  
22 than that. Then there is 24 which deals with -- there's  
23 also 26, I see.

24 No, I don't think it's sufficient to say that the  
25 document speaks for itself. I think you have to admit -- in

1 other words, what you are saying in effect that you're  
2 conceding that the document is authentic and that that's  
3 what the document says. You agree that's what the document  
4 says, so there is no disagreement later on as to the import  
5 of that particular sentence.

6 MS. POLIVY: Well, Your Honor, once we admit to  
7 the authentication of the document which in these cases we  
8 have --

9 JUDGE CHACHKIN: Well, that's not sufficient. You  
10 have to also indicate that you agree with the import of the  
11 sentence and that's what it says.

12 MS. POLIVY: Your Honor, that's -- I think that  
13 that's the point. We don't have to agree to the import of  
14 the sentence.

15 MR. MOSKOWITZ: We could dispute the import of the  
16 sentence, but the document still says that.

17 JUDGE CHACHKIN: You can dispute it.

18 MS. POLIVY: Normally, you wouldn't ask for  
19 admissions of a phrase of a document when the document is  
20 there. I mean we can argue about what the document means.

21 JUDGE CHACHKIN: But it is more than just the  
22 document. You agree with what the document says in terms --  
23 in other words, you admit as a fact that on June 18th, 1993,  
24 the VSD canceled Rainbow's permit, deleted its call sign and  
25 dismissed as moot Rainbow's assignment application and

1 Press' petition for consideration of fifth extension. So  
2 you don't have to prove that.

3 In other words, you want to dispute that, that  
4 even though the letter says that, that you don't admit to  
5 it.

6 MS. POLIVY: You can dispute the characterization  
7 without disputing the fact is the problem.

8 JUDGE CHACHKIN: Well, you've got to say more than  
9 the document speaks for itself. It either has to say -- you  
10 can dispute it or you don't agree that that's what it did or  
11 you do agree. So you don't have to prove it.

12 In other words, you don't have to put in a  
13 document to show in fact that this thing happened. In other  
14 words, you put in a document to show that on such-and-such a  
15 date VSD -

16 MS. POLIVY: Yes. They appended the documents  
17 which we authenticated.

18 JUDGE CHACHKIN: In other words, they don't have  
19 to put the document in the record because you've admitted  
20 it.

21 MR. MOSKOWITZ: That's the point. They just cite  
22 one sentence from the document, whereas --

23 JUDGE CHACHKIN: Well, it doesn't preclude you  
24 from putting in -- if you believe there is something else in  
25 the document which clarifies or changes the import of that

1 sentence, then you could only admit, but you've denied that  
2 it does that because you refer to another part of the  
3 document. So, that's how you prove facts by introducing  
4 documents.

5 MS. POLIVY: Your Honor, for example, in 24, there  
6 is a piece of a sentence that Rainbow was asked to admit.  
7 Now, the best evidence of what was said is that letter. We  
8 don't have to admit -- we don't dispute there is this piece  
9 in the letter.

10 JUDGE CHACHKIN: Wait a minute.

11 MS. POLIVY: In its October 29, 1991 letter to  
12 George Daniels.

13 JUDGE CHACHKIN: Yes.

14 MS. POLIVY: There is a piece of a sentence they  
15 have also put in the document.

16 JUDGE CHACHKIN: Yes.

17 MS. POLIVY: The document is the best evidence of  
18 what the document says. This piece -- I mean if we admit  
19 this piece, all that says is those words appear. That isn't  
20 proper evidence. And admissions are for facts that are  
21 within our control, within our knowledge. This is, in  
22 effect, a stipulation which is somewhat different.

23 JUDGE CHACHKIN: Then in other words --

24 MS. POLIVY: We will stipulate that the document  
25 that they have appended which they also asked us to do is

1 genuine.

2 JUDGE CHACHKIN: In other words, what you can do  
3 is you could admit that that's what the statement says, but  
4 however, clarify it by pointing out that you're not  
5 admitting that that's in fact what happened or something to  
6 that nature.

7 MS. POLIVY: I mean it's just that it is  
8 misleading.

9 MR. BLOCK: The purpose of discovery here and  
10 admissions is one of the discovery tools is to narrow the  
11 issues. If they think that we are misreading the document  
12 in some way, tell us. If they agree that we're reading the  
13 document correctly, we don't have to go back and prove it.  
14 We have narrowed the issue down. That is exactly what we're  
15 seeking here.

16 MS. POLIVY: No. The purpose of admissions in  
17 discovery is to narrow down the factual disputes, not the  
18 legal disputes.

19 JUDGE CHACHKIN: Well, this is not a legal  
20 dispute.

21 MS. POLIVY: Well, insofar as the import of a  
22 document is concerned, that is the gloss that you would put  
23 on it. That is for each of us to argue to you.

24 JUDGE CHACHKIN: It would be very illuminating to  
25 see how they deny certain documents.



1 MS. POLIVY: We haven't denied the --

2 MR. BLOCK: Or deny implications. It would help  
3 the process. We would be able to improve our understanding  
4 of their case, their cross-examination and further the  
5 issues much more quickly than if we are faced with the kind  
6 of responses we have here.

7 MS. POLIVY: I think Mr. Block has articulated  
8 exactly the key. He wants us to admit implications. And  
9 that is inappropriate, Your Honor, when we're dealing with  
10 documents. The documents are genuine. We agree they are  
11 genuine.

12 JUDGE CHACHKIN: Well, that's not sufficient.  
13 That's not what he wants you to admit is genuine. He wants  
14 you to --

15 MS. POLIVY: He wants us to admit the implication  
16 of this document is X, Y, or Z.

17 JUDGE CHACHKIN: It says here under the rules what  
18 your choices are: a sworn statement denying specifically  
19 the matters of which an admission is requested or setting  
20 forth in detail the reasons why he cannot truthfully admit  
21 or deny those matters or written objections on the grounds  
22 that some or all of the requested admissions are privileged  
23 or irrelevant or that the request is otherwise improper in  
24 whole or in part.

25 Those are your choices.

1 MS. POLIVY: Well, it was improper. But I think  
2 you can revise them; and we just deny them.

3 JUDGE CHACHKIN: Those are your choices.

4 MR. BLOCK: You have to deny with an explanation.

5 JUDGE CHACHKIN: You can deny it with an  
6 explanation, but if you are going to object, those are the  
7 grounds you have to object on. And then I can rule on it.  
8 But just saying that the document speaks for itself doesn't  
9 admit or deny anything. And it doesn't constitute a proper  
10 objection. If you want to say you admit that this is what  
11 the letter states, but you deny that this is what happened  
12 or whatever or that you have any knowledge of what happened,  
13 only -- all you can admit is that this is what the letter  
14 states, but state you have no personal knowledge of it.  
15 That's one thing which the separate trial staff has done in  
16 a number of instances. They've indicated they have no  
17 personal knowledge. They could only admit that this is in  
18 fact is what the letter states.

19 MS. POLIVY: Your Honor, that does raise another  
20 problem and that is that the separate trial staff claims to  
21 have no personal knowledge of things that are within the  
22 Commission's purview. It isn't just what they personally  
23 know. They are supposed to represent the Commission even if  
24 they are separate.

25 And when they say they have no personal knowledge,

1 they have said they personally have no personal knowledge,  
2 not that they have gone to the Commission staff and whatever  
3 and asked these things which would normally be the way the  
4 scope of the admissions would work.

5 JUDGE CHACHKIN: We are in a unique position in  
6 that it can't go to the staff.

7 MS. POLIVY: Yes, they can, Your Honor.

8 JUDGE CHACHKIN: No, they can't. They're a party  
9 like everyone else. They cannot go to staff -- they're  
10 separated from the staff.

11 MS. POLIVY: Your Honor, they represent the  
12 Commission. They have access to those things that the  
13 Commission has. They don't represent only themselves.

14 JUDGE CHACHKIN: They only have access to the  
15 things that you have access to. They have no other access.  
16 They have the same accesses you have. That's the whole  
17 point of setting up --

18 MS. POLIVY: Your Honor, if that is the case, why  
19 when we went to get the Freedom of Information Act file, we  
20 find out that they had it two months ago.

21 MR. BLOCK: We never had it.

22 MS. POLIVY: There's a notation on it that David  
23 Silberman read the file on such-and-such a date and returned  
24 it.

25 MR. BLOCK: It depends on what file it is.

1 MS. POLIVY: The Freedom of Information Act file.

2 MR. BLOCK: Actually, we did not see --

3 MS. POLIVY: In the IG's Office.

4 JUDGE CHACHKIN: I don't know anything about that.

5 All I know is that they're a party.

6 MR. BLOCK: We have acted as if we were no  
7 different than any other party.

8 MS. POLIVY: Your Honor, they are in the same  
9 position that the Broadcast Bureau Hearing Division would  
10 have been in.

11 JUDGE CHACHKIN: And the Broadcast Bureau?

12 MS. POLIVY: Would normally go and ask the Docket  
13 Division if there was a question relating to that.

14 JUDGE CHACHKIN: Well, that's separate from the  
15 Mass Media Bureau in this case. You don't have the Mass  
16 Media Bureau who could go to the staff. The Commission,  
17 because of the nature of this case has set up a separate  
18 trial staff which is not -- so it's not typical of the  
19 normal situation where the Bureau Staff has access to the  
20 rest of its Bureau people. You don't have that situation.

21 MS. POLIVY: They do have access to the rest of  
22 the Commission. They are separated only from the Mass Media  
23 Bureau you're saying.

24 JUDGE CHACHKIN: Well, the questions you asked  
25 relate to the Mass Media Bureau.

1 MS. POLIVY: Well, some of them related to the  
2 Mass Media Bureau, some of them related to other entities;  
3 but I think the question is what exactly is a -- who are  
4 they representing?

5 JUDGE CHACHKIN: They are representing --

6 MS. POLIVY: Do we, can we expect them to go to  
7 the rest of the Commission or does Mr. Silberman --

8 JUDGE CHACHKIN: No, you can't expect them to go  
9 to the Commission.

10 MS. POLIVY: -- or Mr. Block simply say, "I don't  
11 know."

12 JUDGE CHACHKIN: Mr. Block or Silberman, what they  
13 will do is they're doing what you do. They're deposing the  
14 individuals.

15 MS. POLIVY: Your Honor, I am obligated when I am  
16 asked for an admission to go to my client.

17 JUDGE CHACHKIN: Yes.

18 MS. POLIVY: I can't just say I don't know.

19 What I'm asking is who was their client.

20 MR. BLOCK: The answer is as we view it under the  
21 separated trial staff situation is we don't know -- we do  
22 not have the same kind of client that would normally be the  
23 case. We cannot go to -- we can go to Commission of Public  
24 Records, like you can. We can't go interview Commission  
25 staff people. We are, as a matter of fact, barred from

1 talking to other people in the Commission about the merits  
2 of the case. Apart from -- no more than you could walk  
3 around and ask somebody about the case.

4 MS. POLIVY: You're separated from the Mass Media  
5 Bureau, but you're not separated from the managing director  
6 or anyone else.

7 MR. BLOCK: We view ourselves as being equally  
8 separated, treated like a party in anything that we --  
9 anyone we contact would be an ex parte communication. We  
10 don't want to muddy the waters and to have a question about  
11 whether or not this is or is not a proper communication. We  
12 want to be sure that our communications are really above-  
13 board here.

14 If there is a public --

15 MS. POLIVY: This isn't a question of above-board,  
16 Mr. Block, this is a question of if the Commission is  
17 present in this proceeding as they would normally be with  
18 respect to the Bureau -- you are in the stead of the Bureau.  
19 The Bureau has been recused from this proceeding. But you  
20 say, "We are different from what the Bureau would ordinarily  
21 do. We can't talk to anyone."

22 MR. BLOCK: You asked, the question was asked by  
23 Rainbow which we admitted a bunch of questions. We admitted  
24 looking at our responses. We admitted 2, 3, 4, 5, 6, 7, 8,  
25 9, 10, 11, 12. We denied those which we had no independent

1 knowledge of what Mr. Gordon knew.

2 The only way we could go to find that out is to go  
3 to Mr. Gordon which we can't do. We denied knowledge of Ms.  
4 Kreisman. We denied that we had any separate knowledge of  
5 Mr. Stewart. That is where we are, put our denials in. We  
6 have not refused to answer something that we thought was  
7 appropriate for an answer based on the information available  
8 in the public record today.

9 I don't know what your question No. 2 and 3 were,  
10 but they were admitted without objection or qualification.

11 JUDGE CHACHKIN: Perhaps the parties will be able  
12 to reach stipulations as to some of these things and what  
13 evidence comes in in depositions. But insofar as Rainbow's  
14 obligations, Rainbow is obligated to either admit or deny  
15 responses where they have objected to. I think there are  
16 four instances and the rules provide you to submit a new or  
17 amended response answering those questions.

18 MR. BLOCK: I don't doubt that there will be an  
19 additional set of admissions after discover is over or that  
20 our obligations to update discovery will -- responses will  
21 kick in and we will file amendments based on the information  
22 that's available after deposition.

23 JUDGE CHACHKIN: All right. I think that takes  
24 care of everything we have.

25 MR. COLE: Your Honor?

1 JUDGE CHACHKIN: Yes.

2 MR. COLE: I have one thing with respect to what  
3 Mr. Block just said.

4 JUDGE CHACHKIN: All right.

5 MR. COLE: And then one further question or  
6 clarification.

7 With respect to the possibility of further  
8 requests for admission, I believe Mr. Block seems to be  
9 assuming that further requests for admissions will be  
10 permitted by Your Honor even though we set an initial  
11 deadline for February 26th.

12 JUDGE CHACHKIN: I expect in the future the  
13 parties will reach stipulations. That period is over for  
14 request for admissions.

15 MR. COLE: Okay. So we will proceed by  
16 stipulation.

17 JUDGE CHACHKIN: Stipulation of the parties, sir.

18 MR. COLE: Okay.

19 MS. POLIVY: With respect to admissions, Rainbow  
20 Broadcasting, LTD. was not a party at that time. It did not  
21 have an opportunity to file, we would like leave to file  
22 within the next 10 days.

23 JUDGE CHACHKIN: I'm not going to permit it. I  
24 don't see any purpose for it at this stage. It's way past t  
25 he time. I think we should proceed by way of stipulations



1 at this stage.

2 MR. COLE: And my second question, Your Honor, is  
3 with respect to documents to be provided by Rainbow, LTD.,  
4 as opposed to Rainbow Company, are we talking about the same  
5 approximately one-week --

6 JUDGE CHACHKIN: Yes, the same time limitation  
7 applied.

8 Now, insofar as this motion for partial summary  
9 decision, we have this motion. Now, the question is are the  
10 parties going to be in a position to respond -- I guess the  
11 parties haven't seen this document yet, so I can only wait  
12 and see what they have to say.

13 My inclination, however, is to not act on this  
14 until discovery has been completed. Unless the parties can  
15 indicate to me -- well, I'll just wait and see what the  
16 parties state in their response or opposition.

17 MR. COLE: I think it normally, without even  
18 seeing the document itself, will be appropriate to wait for  
19 the conclusion of discovery before Discovery is cut off on  
20 claims that there are no disputed issues of fact. But we  
21 will have to respond to it.

22 JUDGE CHACHKIN: Let me just indicate this is a  
23 misrepresentation issue and unless there is a strong showing  
24 made and the arguments of the parties are frivolous, I am  
25 not inclined to grant it. We would go to hearing on the

1 issue. I think that would be the safest way to proceed  
2 unless, as I say, it is all undisputed and the parties are  
3 satisfied and there's no substantial questions raised but  
4 I'll have to wait to see what the parties respond.

5 In any event, anything else? If not, we will be  
6 in recess. Thank you.

7 (Whereupon, at 3:48 p.m., the hearing was  
8 adjourned.)

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